IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 205 of 1999
in
SPECIAL CIVIL APPLICATION No 2365 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COLLECTOR

Versus

TRIVENI PARK CO OP HOUSING SOCIETY LTD

Appearance:
MR AJ DESAI, AGP for the Appellant
MR PM BHATT for Respondent No. 1
MR VC DESAI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 17/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

#. The appellants have challenged the order of the learned Single Judge allowing the petition of the respondents and setting aside the orders of the Collector and the State Government made on 5th March, 1994 and 18th February, 1998, respectively, by which demolition of thirteen shops constructed by the respondent-Society in Survey No.103/3 within the development area of Kapadwanj was ordered.

#. The learned counsel appearing for the appellants argued that the construction of thirteen shops was contrary to law, because, no permission was granted for making such construction in the portion of land in which the shops were constructed at the time when the Collector had issued order on 29.5.1995 granting permission to construct twelve residential houses in 1965 sq. mts. of land while imposing a condition that other 9418 sq. mts. should be kept open. It was submitted that as per condition no. 5 of the order dated 29.5.1965, no construction should be done on the land except by permission in writing of the Collector. Since no such permission was obtained, the order of the Collector made on 5th March,1994 and the revisional order of the State Government confirming that order requiring the shops to be demolished were justified.

#. In the order dated 5th March, 1994 at Annexure:I to the petition, the only ground on which the shops were ordered to be demolished was that the construction was made without obtaining the permission of the Collector. That order was confirmed by the revisional authority on the same ground.

#. In respect of the agricultural land, the Collector's permission is required when any occupant wishes to use his holding for any purpose other than the purpose indicated in Section 65(1) of the Bombay Land Revenue Code, 1879. The provision regarding permission of the Collector requires an application to be made by the occupant and the Collector may after due inquiry, either grant or refuse the permission. This is why the contention is raised that the Collector's permission was not obtained as per the said requirement which was also reflected in the order dated 29th May, 1965 of the Collector while permission was granted in respect of 1965 sq. mts. of land.

#. In the present case, there is no dispute about the fact that the permission to construct thirteen shops was, in fact, granted by the respondent no.3-Area Development Authority on 20th November, 1989. This fact is mentioned

in the letter dated 13.9.90 of Kapadwanj Borough Municipality which is the Area Development Authority, addressed to the respondent-Society and there is no dispute about the same. Under Section 26 of the Gujarat Town Planning & Urban Development Act, 1976, it is provided that on or after the date on which a draft development plan is published in the official gazette under Section 13 in respect of any development area, no person shall carry on any development in any building or over any land, within the limits of the said area without the permission in writing of the appropriate authority and without obtaining certificate from the appropriate authority to the effect that the development charge as leviable under the Act has been paid or that no charge is leviable. Under Section 27 of the said Act, any person, not being the Central Government or the State Government, intending to carry out any development in any building or in or over any land within the limits of a development area on or after the date referred to in section 26, shall except where such development is for any of the purposes specified in the proviso to that section, make an application in writing to the appropriate authority for permission under Section 29 for such development in the prescribed form and with the required particulars.

#. By Section 117 of the said Act, it was provided that, notwithstanding anything contained in any other law for the time being in force, when permission for development in respect of any land has been obtained under this Act, such development shall not be deemed to have unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has not been obtained. The said provision which was contained in Clause (a) of Section 117 has been deleted by Act No. 2 of 1999. However, the permission for construction of these shops which was granted by the Area Development Authority on 20.11.89 during currency of the said provision was sufficient and the construction made pursuant to that permission cannot be ordered to be demolished on the ground that permission of the Collector was not obtained under Section 65 of the Bombay Land Revenue Code.

#. The impact of the provisions of Section 117 of the said Act was considered by this Court in Karimbhai Kalubhai Vs. State of Gujarat and another, reported in 1996 (1) G.L.H. 200 in which the learned Single Judge, in context of similar facts where permission was obtained under Section 29 of the Act, held that by virtue of the provisions of Section 117, the petitioners were not

required to obtain any other permission under any other law. The learned Single Judge followed the earlier unreported decisions which are referred to in para-3 of the judgment for holding that no permission under any other law including that under Section 65 of the Bombay Land Revenue Code would be necessary if development permission was obtained under Section 29 of the Act with respect to the lands in question.

#. In view of the overriding effect of the provisions of Section 117(a) of the Gujarat Town Planning & Urban Development Act, 1976 during the period that it was operating and in view of the fact that the permission was already obtained by the respondent-Society for constructing thirteen shops in the land in question from the Area Development Authority under Section 29 of the Act, there was no need to obtain permission of the Collector for construction of thirteen shops on the land in question under the provisions of Section 65 of the Bombay Land Revenue Code or under the terms and conditions of the order dated 29.5.65. We therefore fully concur with the reasoning of the learned Single Judge given for setting aside the orders of the Collector and the State Government. The appeal is, therefore, dismissed. There shall be no order as to costs.

[R.K. ABICHANDANI, J.]

[D.A. MEHTA, J.]

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